

THE BASILICA—A NINTH CENTURY ROMAN LAW
CODE WHICH BECAME THE FIRST CIVIL CODE
OF MODERN GREECE A THOUSAND YEARS
LATER.

The modern kingdom of Greece received its birth from the Greek War of Independence against Turkey. When these nineteenth century Greeks in 1821 took up arms against their tyrannical and oppressive Mohammedan masters, they very fittingly signalized their freedom by definitely adopting the great code of their Byzantine forefathers to be their own law.¹

And for thirteen years this great Eastern Roman Imperial Code, the Basilica, was clothed with statutory force among the Greek revolutionists, not only during their long war for independence, but also for two years after modern Greece finally achieved her freedom from the Turkish yoke.² Then the Basilica gave way to the *present* Civil Code of Greece, namely, the Hexabiblos.³

But this change did not interrupt at all the influence of *Roman law* codes in modern Greece: for this same Hexabiblos—originally published in the fourteenth century and being the last code of the old Roman Empire—was, before its modern Greek promulgation in 1835, thoroughly revised and expanded in connection with the more voluminous Basilica.⁴ Hence it is no exaggeration to say that the essence of modern Greek private law is the Basilica, for the present Civil Code of Greece is a double abridgment of the Roman Imperial ninth century Basilica—the first synopsis or abstract being made five hundred years

¹ This action was in harmony with existing conditions as to law among the conquered Greeks. For, after the Turks took Constantinople and destroyed the Eastern Roman Empire in 1453, they allowed (and still allow today) their Greek subjects to be governed as to personal law and status by the Greek patriarch of Constantinople, in whose ecclesiastical courts was (and is still) applied the post-Justinian law of the Roman Empire as received into the canon law of the orthodox Greek church: Sherman, *Roman Laws in the Modern World*, Vol. I, Secs. 189, 194.

² Sherman, *Id.*, Sec. 194.

³ *Id.*

⁴ *Id.*

later, in the fourteenth century,⁵ and the second one thousand years later, in the nineteenth century.⁶

What sort of a codification was this old Eastern Roman code, the vigor of which has already spanned ten centuries and still endures today among the modern Greeks? This question will be answered by a brief history of the Basilica, which will be followed by translations of illustrative excerpts taken from this greatest of post-Justinian Roman legislative monuments.

A few years before the death of Alfred the Great in England there was promulgated at Constantinople about A. D. 892 by the Eastern Roman Emperor Leo VI a long-heralded Greek abridgment of Justinian's sixth century celebrated *Corpus Juris*.⁷ Leo's legislation, inspired by his imperial father Basil the Macedonia, is now best known as the Basilica, a title derived from the Greek *Τὰ βασιδικά* (the "Imperial" laws).⁸

Five hundred years later the medieval Thessalonian judge Harmenopulos, in his own *Hexabiblos*, thus accurately describes the Basilica: "Finally Leo the Wise, most celebrated Emperor, united (Justinian's) Digest, Code, and most of the Institutes into one work, and, arranging this compilation into sixty books, he published the so-called *Hexacontabiblos*, which he divided into six volumes." The reasons for Leo's codification were as follows: The change in the official language of the Roman Empire from Latin to Greek,⁹ and the growth of new law since Justinian's time, which had made it necessary to revise the Justinianean codification, then four hundred years old.

But so scrupulously careful was Leo to respect the earlier codification (which is the source of the Basilica), that he never

⁵ Sherman, *Roman Law in the Modern World*, Vol. I, Sec. 182.

⁶ Sherman, *Id.*, Sec. 194.

⁷ The Emperor Justinian did not call his grand codification by the title of *Corpus Juris*; this synthetic appellation came into use late in the sixteenth century, being first employed by the celebrated French jurist, Denis Godefroy: Sherman, *Roman Law in the Modern World*, Vol. I, Sec. 135.

⁸ To derive "Basilica" from the name of the Emperor Basil, although plausible, is not correct: Sherman, *Id.* The Greek *βασιδικός* means literally *royal* (the nearest approximation in the Greek language to the Latin "imperialis").

⁹ See Sherman, *Roman Law in the Modern World*, Vol. I, Sec. 167.

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promulgated the Basilica as actually superseding Justinian's grand work. Nevertheless, because the Basilica were written in Greek and were an adaptation of Justinian's law to the needs of the ninth century Roman Empire, the Justinianean codification, although never actually abrogated by Leo or any subsequent emperor down to the end of the empire in A. D. 1453, gradually became supplanted, and by the end of the tenth century fell into disuse.¹⁰

Leo's Basilica were especially intended for the use of practising lawyers. It is not known who were the compilers of this most excellent and famous Byzantine codification. The Basilica have been translated into Latin by the learned Heimbach during the years 1833-1870; his work constitutes one of the greatest literary achievements of the nineteenth century.¹¹ The Basilica have never been translated into English.

The style of the Basilica is thoroughly Roman, as will appear from the following excerpts, which are strikingly terse and lucid. Moreover, these excerpts portray the innate juridical excellence of this greatest Graeco-Roman code, which has been promulgated twice—first in the ninth century and second in the nineteenth century:

"Law is so called from justice, for it is the art of what is good and equitable. Moreover, law is either public or private.¹² And it is either written or unwritten.¹³ To know the laws is to know, not their words, but their sense."¹⁴

"Laws should be made concerning what happens frequently, and not rarely.¹⁵ The law-making power should disregard what happens only once or twice and not deem it worthy of legislation.¹⁶ The use of a statute is to command . . . to forbid . . . to permit . . . to punish."¹⁷

¹⁰ Use of the Justinianean law books in the Roman Imperial courts did not, however, entirely cease until the twelfth century. Sherman, *Id.*, Secs. 168, 176.

¹¹ Heimbach's Latin translation was not the earliest.—that of Fabrot in 1638 has this honor. Heimbach employed all the extant MSS. of the Basilica. In 1897 a supplement, known as Volume 7, was added to Heimbach's work by two Italians, Ferrini and Mercati. See Sherman, *Roman Law in the Modern World*, Vol. I, Sec. 176; Vol. III, Sec. 955.

¹² *Bas.*, I, I, 1.

¹⁵ *Bas.*, I, I, 15.

¹³ *Bas.*, I, I, 6.

¹⁶ *Bas.*, I, I, 17.

¹⁴ *Bas.*, I, I, 27.

¹⁷ *Bas.*, I, I, 18.

"All law is established by consent or necessity, or is fixed by custom.¹⁸ Concerning matters as to which there is no written law, custom and usage govern.¹⁹ . . . Long-established custom has the force of a statute and should govern . . . those matters as to which there is no written law."²⁰

"A private agreement does not abrogate public law.²¹ A gift is that which is transferred under no necessity."²²

"Freedom is a priceless thing.²³ Consent, not sexual intercourse, makes a marriage.²⁴ Capital punishment means death and loss of citizenship."²⁵

"Three persons make a corporation.²⁶ A legacy made to a lawful corporation is valid."²⁷

"No one can transfer to another a greater right than he himself has.²⁸ No one can transmit to his heir a greater right than he himself has.²⁹ Under equal conditions he who is in possession is preferred.³⁰ A creditor permitting his pledge to be sold loses his pledge."³¹

"Obligations arise from contracts, torts, or from the law itself.³² An impossible obligation is void.³³ Persons who are absent may make contracts by means of letter and messenger."³⁴

"A debtor is a person from whom, against his will, money may be obtained.³⁵ He who promises to pay in a certain place is regarded as having contracted at that place.³⁶ In every obligation in which no time of payment is fixed, payment is due immediately."³⁷

"A bona fide purchaser is either one who did not know that the thing sold to him belonged to another, or one who thought that the vendor had a right to sell, for instance, as agent or guardian.³⁸ A purchaser at a sale made under order of court is

¹⁸ *Bas.*, 1, 1, 52.

¹⁹ *Bas.*, 1, 1, 41, 1 and *Bas.*, 1, 1, 42.

²⁰ *Bas.*, 2, 3, 45.

²¹ *Bas.*, 2, 3, 82.

²² *Bas.*, 2, 3, 106.

²³ *Bas.*, 2, 3, 30.

²⁴ *Bas.*, 2, 2, 99.

²⁵ *Bas.*, 2, 3, 158.

²⁶ *Bas.*, 52, 1, 1. This third variety of obligations is *quasi contractual* or *quasi tortious*.

²⁷ *Bas.*, 2, 3, 185.

²⁸ *Bas.*, 52, 1, 2.

²⁹ *Bas.*, 2, 2, 105.

¹⁹ *Bas.*, 1, 1, 41, pr.

²⁰ *Bas.*, 2, 2, 82.

²¹ *Bas.*, 44, 18, 19.

²² *Bas.*, 2, 3, 54.

²³ *Bas.*, 2, 3, 120.

²⁴ *Bas.*, 2, 3, 128.

²⁶ *Bas.*, 52, 1, 20.

²⁷ *Bas.*, 2, 3, 14.

²⁸ *Bas.*, 2, 2, 106.

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a bona fide possessor.³⁹ Nothing is so contrary to good faith as force or intimidation."⁴⁰

"My partner's partner is not a partner of mine.⁴¹ No one commits an injury unless he does that which he had no legal right to do.⁴² Lack of skill may be reckoned as negligence.⁴³ Tort actions do not descend against the heirs of the tortfeasor."⁴⁴

"As long as a will remains valid, so long the rights of intestacy are in abeyance.⁴⁵ In wills the wishes of the testator should be liberally interpreted.⁴⁶ The greater includes the less.⁴⁷ In the whole is also contained a part."⁴⁸

"An action is the right of suing a person in court for what is due.⁴⁹ Whatever is done by a judge outside of his jurisdiction is invalid.⁵⁰ No one shall be dragged from his house (in a civil action).⁵¹ Defendants are more often favored than plaintiffs."⁵²

"He who is silent is not regarded as confessing, yet he does not deny.⁵³ Whatever is decided by a judgment is held to be true."⁵⁴

"If I die simultaneously with my son who was over the age of puberty, I am regarded as dying first; but if the son was under the age of puberty, the contrary is the rule.⁵⁵ Every general statement of law is weak, in that it may be subverted by an exception."⁵⁶

From the excellence of the Basilica it is no wonder that this code became not only the chief authority of the Byzantine-Roman lawyer until the very end of the Roman Empire at Constantinople, but also the first code of revived modern Greece ten centuries after its original promulgation.

Charles P. Sherman, D.C.L.

Formerly Assistant Professor of Roman Law, Yale University Law School.

³⁹ *Bas.*, 2, 3, 137.

⁴⁰ *Bas.*, 2, 3, 116.

⁴¹ *Bas.*, 2, 3, 47.

⁴² *Bas.*, 2, 3, 151.

⁴³ *Bas.*, 2, 3, 132.

⁴⁴ *Bas.*, 2, 3, 111.

⁴⁵ *Bas.*, 2, 3, 89.

⁴⁶ *Bas.*, 2, 3, 12.

⁴⁷ *Bas.*, 2, 3, 110.

⁴⁸ *Bas.*, 2, 3, 113.

⁴⁹ *Bas.*, 52, 1, 50.

⁵⁰ *Bas.*, 2, 3, 170.

⁵¹ *Bas.*, 2, 30, 103.

⁵² *Bas.*, 2, 3, 125.

⁵³ *Bas.*, 2, 3, 142.

⁵⁴ *Bas.*, 2, 3, 207.

⁵⁵ *Bas.*, 44, 18, 8.

⁵⁶ *Bas.*, 2, 3, 202.